

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fourth day of January Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.55 of 2017

IN CRL A.5/2017

S.C.NO.54/2016

[ON THE FILE OF THE SESSIONS COURT,MAHALIR NEETHI MANDRAM[FAST TRACK
MAAHILA COURT,ERODE DISTRCT]

SAMUNDEESWARI

[PETITIONER]

Vs

THE STATE BY
INSPECTOR OF POLICE,
BANGALAPUDUR POLICE STATION,
ERODE DISTRICT.
CR.NO.434/2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.5/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in S.C.No.54/2016 by the Sessions Court, Mahalir Neethi Mandram (Fast Track Mahila Court), Erode District by the judgement dated 19.12.2016 enlarge her on bail pending disposal of the above criminal appeal before this Honble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Appeal No.5/2017 on the file of the High Court and upon hearing the arguments of MR.M/S.I.C.VASUDEVAN Advocate for the petitioner and of MR.R.RAVICHADRASN Government Advocate[crl.side] on behalf of the Respondent the court made the following order:-

Heard Mr.I.C.Vasudevan, Learned counsel for the Petitioner/Appellant and Mr.R.Ravichandran, Learned Government Advocate (Crl. Side) for the Respondent/Complainant.

2.The Petitioner/Appellant/Accused has preferred the instant Criminal Appeal No.5 of 2017 before this Court (as an aggrieved person) as against the Judgment dated 19.12.2016 in S.C.No.54 of 2016 passed by the Learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode.

3.The trial Court had found the Petitioner/Appellant/Accused guilty in respect of an offence under Section 304(ii) I.P.C. and accordingly, imposed a punishment of Rigorous Imprisonment for a

period of five years with a fine of Rs.4,000/-, in default of payment of fine, a default sentence of Simple Imprisonment for a period of one year was also imposed. In fact, the trial Court had categorically observed in its Judgment that the deceased was of 70 years old and she was standing by catching the iron rod (stabled in the earth) and at that time, the Petitioner/Appellant/Accused came behind her and suddenly beat Lakshmi (since deceased) with her two hands, pushed down, she later died on account of fall. Therefore, the trial Court opined that the act of the Petitioner/Appellant/Accused came under the purview of Section 304(ii) I.P.C. and not under Section 302 I.P.C.

4.The Petitioner/Appellant has filed CrI.M.P.No.55 of 2017 seeking 'Suspension of Sentence' imposed by the trial Court and to enlarge her on bail pending disposal of the Appeal.

5.The Learned Counsel for the Appellant/Accused strenuously contends that the trial Court had committed an error in rejecting the evidence of D.W.2 (a natural witness) and there was no reason for D.W.2 to utter a false evidence before the trial Court.

6.The Learned Counsel for the Appellant also takes a plea that the trial Court had relied upon the evidence of interested prosecution witnesses and in fact, there was no independent witness to the alleged occurrence.

7.Per contra, it is the contention of the Learned Government Advocate (CrI.Side) for the Respondent/Prosecuting Agency that before the trial Court on behalf of the Respondent/Prosecution, Witnesses P.W.1 to P.W.15 were examined and Exs.P1 to P18 were marked. M.O.1 to M.O.5 were marked. On the side of the Appellant/ Defence, Witnesses D.W.1 and D.W.2 were examined and Exs.D1 to D6 were marked. Also, Exs.C1 to C5 were marked.

8.Indeed, it is the version of the Respondent that the trial Court had appreciated the entire oral and documentary evidence available on record and came to a resultant conclusion that the deceased Lakshmi was pushed down by the Appellant/Accused (who came behind her) and suddenly beat her with her two hands, pushed her down, as a result of which, the said Lakshmi had died. In these circumstances, the trial Court clearly held that the act of the Appellant/Accused comes under Section 304(ii) I.P.C. and accordingly, convicted and sentenced her to undergo Rigorous Imprisonment for a period of five years with fine of Rs.4,000/-, in default of payment of fine, further to undergo Simple Imprisonment of one year.

9.It comes to be known that the Petitioner/Appellant/Accused had remitted a fine amount of Rs.4,000/- before the trial Court itself.

10.In Law, filing of a Petition/Application seeking 'Suspension of Sentence' and to enlarge an Accused on bail is an integral part of the main Appeal.

11.It is not in dispute that in Law, an 'Appeal' is a

continuation of Original Proceedings i.e. of the trial Court. In the instant case, the Petitioner/Appellant/Accused has exercised her statutory right of preferring the present Criminal Appeal, as envisaged under the Criminal Procedure Code.

12.At this stage, this Court has perused the 'Memorandum of Grounds of Appeal' and is of the considered view that the Petitioner/Appellant/Accused has raised some tangible points which require detail rumination in the hands of this Court at the time of hearing of the main Criminal Appeal.

13.In view of the fact that the Petitioner/Appellant/Accused has preferred the instant Criminal Appeal before this Court and this Court, keeping in mind a primordial fact that an 'Appeal' is a continuation of Original Proceedings and taking note of the attendant facts and circumstances of the present case in an encircling fashion and also this Court, bearing in mind yet another pivotal fact that the present Criminal Appeal is not likely to be heard in the near future, at this stage, is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioner/Appellant/Accused on her executing a bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only) with two sureties each for a like sum to the satisfaction of the Learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Erode and on further condition that she shall appear before the said Court once in a month on the First Working day of every English calendar month at 12.00 noon without fail until further orders.

14.Accordingly, the Crl.M.P.No.55 of 2017 is ordered, on above terms.

-sd/-
04/01/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE
MAGALIR NEETHIMANDRAM[FAST TRACK MAHILA
COURT],ERODE

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON,COIMBATORE

4 THE STATE BY
INSPECTOR OF POLICE,
BANGALAPUDUR POLICE STATION,
ERODE DISTRICT.

+1 C.C. to M/S.I.C.VASUDEVAN Advocate on payment of necessary
charges SR.NO. 278

Order

in
CRL MP.55/2017

in
CRL A.5/2017

Date :04/01/2017

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 05/01/2017